

Article 51B.

North Carolina Federal Tax Reform Allocation Committee.

**§ 143-433.6. Legislative findings.**

(a) The General Assembly finds and determines that the Tax Reform Act of 1984 established a federal volume limitation upon the aggregate amount of "private activity bonds" that may be issued by each state; that, pursuant to Section 103(n) of the Internal Revenue Code of 1954, as amended, a previous Governor of North Carolina issued Executive Order 113 proclaiming a formula for allocating the federal volume limitation for North Carolina; that on October 22, 1986, the Tax Reform Act of 1986, hereinafter referred to as the "Tax Reform Act", was enacted; that the Tax Reform Act (i) establishes a new unified limitation for private activity bonds on a state by state basis, (ii) establishes a new definition of the types of private activity bonds to be included under those new limitations, (iii) establishes a new low-income housing credit to induce the construction of and the improvement of housing for low-income people, and (iv) limits the aggregate use of this low-income housing credit on a state by state basis; that the Tax Reform Act provides for federal formulas for the allocation of these "state by state" resources, and also provides for states which cannot use the federal formula for allocation to set allocation procedures and formulas which are more appropriate for the individual states; that the Tax Reform Act gives authority for the legislature of each state to formulate and execute plans for allocation; and that Section 146 of the Internal Revenue Code of 1986, as amended, and Section 42 of the Internal Revenue Code of 1986, as amended, will require continued inquiry and study in the ways in which North Carolina can best and most fairly manage and utilize resources provided therein.

(b) The General Assembly further finds and determines that the Economic Growth and Tax Relief Reconciliation Act of 2001 added new subsections (a)(13) and (k) to section 142 of the Internal Revenue Code of 1986, as amended, which (i) establish a new type of private activity bond that can be issued to finance "qualified public educational facilities," (ii) establish an annual aggregate limitation on the face amount of qualified public educational facility bonds that may be issued on a state-by-state basis, (iii) provide that each state may allocate the annual aggregate limitation for any calendar year in such manner as each state determines appropriate, and (iv) provide for an elective carryforward by each state of the unused annual aggregate limitation; and that subsections (a)(13) and (k) will require continued inquiry and study in the ways in which North Carolina can best and most fairly manage and utilize the resource provided therein.

(c) The General Assembly further finds and determines that section 1400U-3 of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA) added a new type of exempt facility bond called "recovery zone facility bonds" to be used to finance construction, renovation, and equipping of recovery zone property for use in any trade or business in a recovery zone, all as defined in ARRTA, and a new type of governmental bond called "recovery zone economic development bonds." The ARRTA provides a formula for allocation of authority to issue recovery zone facility bonds and recovery zone economic development bonds to the states and by which the authority is to be reallocated by the State to counties and large municipalities within the State.

(d) The General Assembly further finds and determines that section 54D of the Internal Revenue Code of 1986, as amended, permits the issuance of tax credit bonds called "qualified energy conservation bonds" (QECBs), the proceeds of which must be used for certain energy conservation purposes enumerated in section 54D. Section 54D and ARRTA provide a national bond limitation for the issuance of QECBs, and the Treasury Department has allocated that authority among the states. Under section 54D, the United States is required to reallocate the authority to issue QECBs to the counties and large local governments within the states based on

population, in accordance with the guidelines provided by the Treasury Department, and to assure that not more than thirty percent (30%) of the QECBs issued in a state are used for private activity bonds, as defined in section 54D. (1987, c. 588, s. 1; 2008-204, s. 6.1; 2009-140, s. 2.)

#### **§ 143-433.7. North Carolina Federal Tax Reform Allocation Committee.**

The North Carolina Federal Tax Reform Allocation Committee, hereinafter referred to as the "Committee", is hereby established. The Committee is a continuation of the Interim Private Activity Bond Allocation Committee established under Executive Order 28 and amended under Executive Order 31 and the North Carolina Federal Tax Reform Allocation Committee established under Executive Order 37. The Secretary of the Department of Commerce, the Executive Assistant to the Governor for Budget Management, and the Treasurer of the State of North Carolina shall constitute the membership of this Committee. The Secretary of the Department of Commerce shall serve as Chairman of the Committee. (1987, c. 588, s. 2.)

#### **§ 143-433.8. Duties.**

The Committee shall perform the following duties:

- (1) Manage the allocation of private activity bonds, low-income housing credits, qualified public educational facility bonds, recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds and receive advice from bond issuers, elected officials, and the General Assembly.
- (2) Continue to monitor bond markets, economic development financing trends, school financing trends, housing markets, and tax incentives available to induce events and programs favorable to North Carolina, its cities and counties, and individual citizens.
- (3) Continue to study the ways in which North Carolina can best and most fairly manage and utilize the allocation of private activity bonds, low-income housing credits, qualified public educational facility bonds, recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds.
- (4) Report to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Revenue Laws Study Committee as requested and on not less than an annual basis. The annual report is due by November 1 of each year. (1987, c. 588, s. 3; 2008-204, s. 6.2; 2009-140, s. 3.)

#### **§ 143-433.9. Allocation.**

(a) To provide for the orderly and prompt issuance of bonds the allocation of which is managed under this Article, the Committee must follow formulas for allocating the following: (i) the unified volume limitation, (ii) the state housing credit ceiling, (iii) the annual aggregate limitation on the face amount of qualified public educational facility bonds, (iv) the limitation on issuance of recovery zone facility bonds, (v) the limitation on issuance of recovery zone economic development bonds, and (vi) the limitation on issuance of qualified energy conservation bonds. The unified volume limitation for all issues of

private activity bonds, other than qualified public educational facility bonds and recovery zone facility bonds, in North Carolina shall be considered as a single resource to be allocated under this Article. The annual aggregate limitation on the face amount of qualified public educational facility bonds for all issues in North Carolina shall be considered as a single resource to be allocated under this Article. The Committee shall issue the following: (i) allocations of the unified volume limitation, (ii) allocations of the state housing credit ceiling, (iii) allocations and reallocations of the aggregate limitation on the face amount of qualified public educational facility bonds, (iv) allocation and reallocation of the authority for issuance of recovery zone facility bonds allocated to the State, (v) allocation and reallocation of the authority for issuance of recovery zone economic development bonds allocated to the State, (vi) allocation and reallocation of authority for issuance of qualified energy conservation bonds allocated to the State, and (vii) allocation of other limitations on authority to issue bonds as may be directed by the Governor. The Committee shall set forth procedures for making such allocations and in the making of such allocations shall take into consideration the best interest of the State of North Carolina with regard to the economic development, school facility needs, energy conservation, green initiatives, and general prosperity of the people of North Carolina. In making the initial allocations for recovery zone facility bonds and recovery zone economic development bonds, the Committee shall follow the formula provided in section 1400U-1(a)(3) of ARRTA. In making the initial allocation for qualified energy conservation bonds, the Committee shall follow the guidelines provided in section 54D of the Internal Revenue Code of 1986. The Committee shall make all elective carryforwards of the unused unified volume limitation, the annual aggregate limitation on the face amount of qualified public educational facility bonds, recovery zone facility bonds, qualified energy conservation bonds, and any other bonds or tax credits over which it has allocation authority on behalf of the State. The Committee shall monitor the issuance of qualified energy conservation bonds to ensure that not more than thirty percent (30%) of such bonds are used for purposes that would be treated as private activity bonds under the Internal Revenue Code of 1986, as amended. The Committee is authorized to establish a procedure to monitor whether the initial allocations of recovery zone facility bonds or recovery zone economic development bonds to counties and large municipalities pursuant to ARRTA will be utilized, for an allocation that will not be utilized to be waived by notice to the Committee, and for the reallocation of the waived allocation to other projects that qualify pursuant to ARRTA.

(b) In administering the low-income housing credit program, the Committee shall adopt a Qualified Allocation Plan (the Plan) as required by 26 U.S.C. § 42(m) annually. Solely with respect to the adoption of the Plan, the Committee is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the Plan, the Committee shall:

- (1) Publish the proposed Plan in the North Carolina Register at least 30 days prior to the adoption of the final Plan;

- (2) Notify any person who has applied for the low-income housing credit in the previous year and any other interested parties of its intent to adopt the Plan;
- (3) Accept oral and written comments on the proposed Plan; and
- (4) Hold at least one public hearing on the proposed Plan.

(c) In administering the allocation and reallocation of authority for issuance of qualified energy conservation bonds allocated to the State and reallocated to any "large local government" as defined in 26 U.S.C. § 54D(e), the Committee shall establish procedures (i) to monitor whether the initial sub-allocations of qualified energy conservation bonds to large local governments will be utilized by October 1, 2017; (ii) for the waiver and return to the Committee of sub-allocations that will not meet the deadline imposed by this subsection; and (iii) for the reallocation of returned sub-allocations for other projects or purposes that qualify under 26 U.S.C. § 54D(f) for financing with qualified energy conservation bonds. The Committee shall also develop programs described by 26 U.S.C. § 54D(f)(1)(A)(iii) and shall consider those programs along with other eligible uses for qualified energy conservation bonds in determining the reallocation of unused and returned qualified energy conservation bond allocation. (1987, c. 588, s. 4; 2001-299, s. 1.1; 2008-204, s. 6.3; 2009-140, s. 4; 2017-57, s. 15.23.)